State Government of Selangor & Anor v Murtini bt Kasman & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(IM)(NCVC)-74–02 OF 2013
MOHD HISHAMUDIN, ABDUL AZIZ ABDUL RAHIM AND MOHAMAD ARIF JJCA
5 MARCH 2014

Constitutional Law — Election — Election manifesto — Whether promises made in election manifesto legally binding and enforceable on state government — Whether mere moral obligations — Whether legitimate expectation created

Contract — Intention to create legal relationship — Election manifesto — Whether promises made in election manifesto legally binding and enforceable on state government — Whether mere moral obligations — Whether legitimate expectation created

Limitation — Public authorities — Whether action time barred — Claim by citizens to enforce against state government promise made in election manifesto four years after election — Whether claim time barred — Public Authorities Protection Act 1948 s 2(a)

During the campaign for the 2008 General Election, the *Pakatan Rakyat* coalition issued a campaign manifesto stating that in the event the *Pakatan Rakyat* coalition ('PR') were to be elected to power in the State of Selangor ('Selangor'), the State Government of Selangor would give an allowance to every single mother in Selangor. The PR was voted to power in Selangor. The second appellant was appointed the *Menteri Besar* (Chief Minister) of Selangor. However, the State Government of Selangor did not introduce any scheme providing allowance to single mothers. More than four years later, the plaintiffs/respondents, claiming to be single mothers in Selangor, filed this suit seeking a declaration that they were entitled to the single mother allowance by reason of the election manifesto. The defendants/appellants applied pursuant to O 18 r 19(1) of the Rules of Court 2012 to strike out the respondents' statement of claim on the grounds that it was an abuse of the process of the court. The High Court dismissed the striking out application on the grounds that: (a) the respondents had a reasonable cause of action against the appellants, the cause of action being that of legitimate expectation; (b) that the appellants were not protected by s 2(a) of the Public Authorities Protection Act 1948 ('the Act') since only in September 2012 the second appellant announced that single

mothers in Selangor would not be given any single mother allowance. The appellants appealed against this decision.

Held, allowing the appeal with costs:

(1) A government should not be bound by an election manifesto. A manifesto contains promises by a political party made during the election campaign period prior to an election in order to attract votes. They are not solemn promises or representations made by a government. A political party and the government are two different legal entities — and they remain so, notwithstanding that the political party that made the promise in its manifesto wins the election and eventually forms the government. The obligation to honour an election promise, must at best, be only a moral obligation (see para 14).

(2) There was no room for the doctrine of legitimate expectation to be considered since there was never any representation made by the State Government of Selangor (see para 19).

(3) Due to the lateness in the filing of the writ, limitation had set in by reason of s 2(a) of Act. It was not pleaded in the statement of claim, nor was there any evidence that the second appellant made an announcement in September 2012 to the effect that the State Government of Selangor would not be implementing any financial aid scheme for single mothers (see para 20).

[Bahasa Malaysia summary

Semasa kempen untuk Pilihan Raya Am 2008, parti campuran Pakatan Rakyat mengeluarkan perisytiharan kempen menyatakan bahawa jika parti campuran Pakatan Rakyat ('PR') dipilih untuk mentadbir di Negeri Selangor ('Selangor'), Kerajaan Negeri Selangor akan memberi elaun kepada setiap ibu tunggal di Selangor. PR dipilih untuk mentadbir di Selangor. Perayu kedua dilantik sebagai Menteri Besar Selangor. Walau bagaimanapun Kerajaan Negeri Selangor tidak mengumumkan apa-apa skim yang memberikan elaun kepada ibu tunggal. Lebih empat tahun kemudian, plaintif-plaintif/responden-responden mendakwa sebagai ibu-ibu tunggal di Selangor, memfailkan tindakan ini memohon perisytiharan bahawa mereka berhak kepada elaun ibu tunggal atas alasan perisytiharan pilihan raya. Defendan-defendan/perayu-perayu memohon berikutan A 18 k 19(1) Kaedah-Kaedah Mahkamah 2012 membatalkan pernyataan tuntutan responden-responden atas alasan bahawa ia adalah penyalahgunaan proses mahkamah. Mahkamah Tinggi menolak permohonan pembatalan tersebut atas alasan bahawa: (a) responden-responden mempunyai kausa tindakan yang munasabah terhadap perayu-perayu, kausa tindakan yang mempunyai harapan yang sah; (b) bahawa perayu-perayu tidak dilindungi oleh s 2(a) Akta Perlindungan Pihak Berkuasa Awam 1948 ('Akta') memandangkan hanya pada

bulan September 2012 perayu kedua mengumumkan bahawa ibu-ibu tunggal di Selangor tidak akan diberikan apa-apa elaun ibu tunggal. Perayu-perayu merayu terhadap keputusan ini.

Diputuskan, membenarkan rayuan dengan kos:

(1) Kerajaan tidak patut terikat dengan perisytiharan pilihan raya. Perisytiharan mengandungi janji-janji oleh parti politik yang dibuat semasa tempoh kempen pilihan raya sebelum pilihan raya untuk mendapatkan undi. Ia bukan janji-janji serius atau representasi yang dibuat oleh kerajaan. Parti politik dan kerajaan adalah dua entiti undang-undang yang berbeza — dan ia kekal sedemikian, walaupun bahawa parti politik yang membuat janji-janji dalam perisytiharannya menang pilihan raya dan akhirnya membentuk kerajaan. Kewajipan untuk menghormati janji-janji pilihan raya, sebaik-baiknya, hanya kewajipan moral (lihat perenggan 14).

(2) Tiada ruang untuk doktrin harapan yang sah dipertimbangkan memandkan tidak pernah terdapat apa-apa representasi yang dibuat oleh Kerajaan Negeri Selangor (lihat perenggan 19).

(3) Akibat kelewatan memfailkan writ, had masa telah bermula atas alasan s 2(a) Akta. Ia tidak diplidkan di dalam pernyataan tuntutan, ataupun terdapat apa-apa keterangan bahawa Kerajaan Negeri Selangor tidak akan melaksanakan apa-apa skim bantuan kewangan untuk ibu-ibu tunggal (lihat perenggan 20).]

Notes

For cases on whether action time-barred, see *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2450–2451.

Cases referred to

Bromley London Borough Council v Greater London Council and another [1982] 1 All ER 129, CA (folld)

Legislation referred to

Public Authorities Protection Act 1948 s 2(a)
Rules of Court 2012 O 18 r 19(1)

Appeal from: Civil Suit No 21NCVC–199–11 of 2012 (High Court, Shah Alam)

Vishnukumar (Salim Bashir with him) (Salim Bashir & Ruswiza & Co) for the appellants.

Walter Pereira (Izyan Darlina and T Geetha with him) (Messrs Kamarudin & Partners) for the respondents.

Mohd Hishamudin JCA (delivering judgment of the court):

[1] This appeal is against the decision of the learned High Court judge of Shah Alam of 23 January 2013. The learned High Court judge had dismissed a striking out application by the appellants pursuant to O 18 r 19(1) of the Rules of Court 2012 on the grounds that the respondents' statement of claim is an abuse of the process of the court.

[2] On 13 May 2013, we, unanimously, allowed the appeal with costs; and we set aside the order of the High Court.

[3] We now give our grounds.

[4] The following are the essential facts of the case.

[5] During the campaign period for the 2008 General Election, the *Pakatan Rakyat* coalition (consisting of three political parties, namely, the People's Justice Party (*Parti Keadilan Rakyat*), the Democratic Action Party ('DAP') and the Pan-Malaysian Islamic Party ('PAS') issued a campaign manifesto stating that in the event the *Pakatan Rakyat* coalition were to be elected to power in the State of Selangor, the State Government of Selangor would give an allowance to every single mother in the State of Selangor. The particulars as to the nature of the allowance (for example, the amount of the allowance, the frequency and the criteria for the entitlement to such allowance), however, are not stated in the statement of claim.

[6] The general election took place on 8 March 2008.

[7] As events turned out, the *Pakatan Rakyat* coalition, in the 2008 General Election, was voted to power in the State of Selangor. The second appellant, YAB Tan Sri Khalid Ibrahim, of the People's Justice Party (*Parti Keadilan Rakyat*) was appointed the *Menteri Besar* (Chief Minister) of the State of Selangor.

[8] However, after the 2008 General Election, the State Government of Selangor did not introduce any scheme in the State of Selangor providing allowance to single mothers.

[9] More than four years later, that is, on 23 November 2012, the 2020 respondents (the plaintiffs at the High Court), claiming to be single mothers in the State of Selangor, filed a suit against the State Government of Selangor alleging that the State Government of Selangor had failed to honour its election

manifesto that promised to give every single mother in the State of Selangor a single-mother allowance. The respondents seek a declaration that they, as single mothers in the State of Selangor, are entitled to be given a single-mother allowance by reason of the *Pakatan Rakyat* coalition's election manifesto. They also seek an order to compel the State Government of Selangor to implement a scheme that provides for every single mother in the State of Selangor, of 18 years and above, a minimum single-mother allowance of RM100 per month.

[10] On 12 December 2012 the appellants (the defendants at the High Court) filed an application pursuant to O 18 r 19(1) of the Rules of Court 2012 to strike out the respondent's statement of claim on the grounds that it was an abuse of the process of the court. It is contended by the appellants that, firstly, in law, the State Government of Selangor was not bound by the election manifesto; and, secondly, any claim against the state government pursuant to the election manifesto is time barred by reason of s 2(a) of the Public Authorities Protection Act 1948 which provides that any action against a public authority (and the State Government of Selangor is a public authority) must be made within 36 months of the default complained against.

[11] The learned High Court judge dismissed the striking out application on the grounds, firstly, that the respondents have a reasonable cause of action against the appellants, the cause of action being that of legitimate expectation.

[12] The learned High Court judge also held that the appellants are not protected by the Public Authorities Protection Act since it is only in September 2012 that the second appellant, in his capacity as the *Menteri Besar* of Selangor, announced that single mothers in the State of Selangor would not be given any single-mother allowance. According to the learned High Court judge, time began to run only from the date of the announcement.

[13] In our judgment, the respondents' claim should have been struck-off by the High Court as being an abuse of the process of the court.

[14] We acknowledge that there is no Malaysian authority yet on the issue as to whether or not a government is bound by an election manifesto. Yet we firmly believe — and we so hold — that it is a sound judicial policy to rule that a government should not be bound by an election manifesto. A manifesto contains promises by a political party made during the election campaign period prior to an election in order to attract votes. They are not solemn promises or representations made by a government. A political party and the government are two different legal entities and they remain so, notwithstanding that the political party that made the promise in its manifesto wins the election and eventually forms the government. As we see it, the

obligation to honour an election promise, must at best, be only a moral obligation, but nothing more than that.

[15] It is the law in the United Kingdom that a government is not bound by an election manifesto. We propose to adopt the same principle. In *Bromley London Borough Council v Greater London Council and another* [1982] 1 All ER 129, the facts are these. In May 1981 there was an election for the Greater London Council ('GLC'). Prior to the election, the Labour Party issued a manifesto. In it they promised that, if they won the election, they would within six months reduce the fares on London's buses and tubes by 25%. The Labour Party won the election. They honoured their promise. They told the London Transport Executive to reduce the fares by 25%. The London Transport Executive did as they were told. Within six months, on 4 October 1981, they reduced the fares by 25%. The members of the public in London who regularly used public transport were delighted with the substantial cut in fares. But the ratepayers of London were not. They were required to contribute BPS69m towards the implementation of the scheme. In order to enforce payment, the GLC made an order directed to all the 35 London boroughs directing them to raise the necessary funds. They were to do it by making a supplementary rate on all the ratepayers. The majority of the London boroughs obeyed the order. They made the supplementary rate and required their ratepayers to pay it. But one London borough — the Bromley London Borough — challenged the validity of the whole procedure. They applied to the courts for an order of certiorari to quash the supplementary precept.

[16] The case was decided in the Court of Appeal and the House of Lords on the interpretation of the Transport (London) Act 1969. It was held that the Greater London Council had acted ultra vires.

[17] Lord Denning (MR), in delivering the judgment of the Court of Appeal, commented on the legal status of the manifesto as the GLC was of the view that they were legally committed to honour the election manifesto. Lord Denning said (at p 135):

> In giving such weight to the manifesto, I think the majority of the council were under a complete misconception. A manifesto issued by a political party- in order to get votes — is not to be taken as gospel. It is not to be regarded as a bond, signed, sealed and delivered. It may contain — and often does contain — promises or proposals that are quite unworkable or impossible of attainment. Very few of the electorate read the manifesto in full. A goodly number only know of it from what they read in the newspapers or hear on television. Many know nothing whatever of what it contains. When they came to the polling booth, none of them vote for the manifesto. Certainly not for every promise or proposal in it. Some may be influenced by one proposal. Others by another. Many are not influenced by it at all. They vote for a party and not for a manifesto. I have no doubt that in this case many rate payers voted for the Labour Party even though, on this one item alone, it was

> against their interests. And vice versa. It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh — on its merits — without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair.

[18] The judgment of the Court of Appeal was upheld by the House of Lords. In the House of Lords, Lord Diplock said (at p 165):

> In neither case when the time comes to play their part in performing the collective duty of the GLC to make choices of policy or action on particular matters, must members treat themselves as irrevocably bound to carry out pre-announced policies contained in election manifestos even though, by that time changes of circumstances have occurred that were unforeseen when those policies were announced and would add significantly to the disadvantages that would result from carrying them out.

And Lord Brandon said (at p. 182):

> It is, of course, entirely appropriate for a council, the majority of whose members have been elected after setting out a particular policy in their election manifesto, to take into account, and give considerable weight to, that circumstance when exercising their discretion in relation to that policy after they have been elected and come to power. It is, however, entirely wrong for such a majority to regard themselves as bound to exercise their discretion in relation to that policy in accordance with their election promises, whatever the cost and other countervailing considerations may turn out to be.

[19] We wish to add here that on the facts of the present case it is clear to us that there is no room for the doctrine of legitimate expectation to be considered as in the first place it is not in dispute that there was never any representation made by the State Government of Selangor.

[20] It is also our judgment in the present case that, due to the lateness in the filing of the writ, limitation has set in by reason of s 2(a) of the Public Authorities Protection Act 1948. In any case, it is not pleaded in the statement of claim, nor is there any evidence that the second appellant made an

announcement in September 2012 to the effect that the State Government of Selangor would not be implementing any financial aid scheme for single mothers.

Appeal allowed with costs.

Reported by Kanesh Sundrum